

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1063/97

HON'BLE SHRI JUSTICE V.RAJAGOPALA REDDY, VC(J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

New Delhi, this the 15th day of May, 2000

Shri Gorey Lal
s/o Shri Kewal Ram
Ex. Switch Man
Railway Station
Northern Railway
Firozabad.
r/o Qr. No.N-E
Rly. Colony Block No.28
Firozabad. ... Applicant

(By Shri B.S.Mainee, Advocate)

Vs.

1. Union of India through
The Secretary
Ministry of Railways
(Railway Board)
Rail Bhawan, Raisina Road
Rafi Marg
New Delhi - 110 001.
2. The General Manager
Northern Railway
Baroda House
New Delhi - 110 001.
3. The Divisional Railway Manager
Northern Railway
Allahabad (UP). ... Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R (Oral)

By Reddy. J.

The applicant while working as Switchman in the scale of Rs.330-560, in the Railways, was served with the charge memo dated 22.11.1995, alleging that he gave clearance of Up Main Line between Up Main Line Starter and Advanced Starter signals without ensuring its clearance through physical observation. It was also alleged that the applicant did not ensure complete passage of 4023 Up Kalindi Express beyond Up Advanced Starter signal and that he gave clearance of track of his zone of responsibility without putting back the departure signals in 'ON' position. He was

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thus alleged to have caused collision of 2801 Up Puroshottam Express with rear portion of Kalindi Express on 20.8.1995 which resulted ^{in the} death of 309 passengers, and serious injuries to several other passengers. The applicant was subjected to departmental enquiry and the enquiry officer has found him guilty of charges. The disciplinary authority agreeing with the findings, imposed the punishment of dismissal from service by order dated 22.3.1996. This order was confirmed by the appellate authority and the revisional authority respectively. The applicant filed the present OA aggrieved by the above orders.

2. The learned counsel for the applicant mainly contends that the authority who has issued the order of removal dated 22.3.1996 was not competent. The learned counsel for the applicant submits that the applicant was promoted to the post of Switchman in the scale of Rs.260-400 by the Senior Divisional Personnel Officer on 20.8.1982 and he was further promoted by the same officer as Senior Switchman in the grade of Rs.330-560. Whereas the authority who has passed the dismissal order, was the Divisional Operating Manager(E), Northern Railway ^{is} a senior scale officer.

3. The learned counsel for the respondents, however, submits that the applicant was promoted only by the Divisional Personnel Officer and the authority who has passed the dismissal order was the Divisional Operating Manager, who is of equivalent rank to the

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Divisional Personnel Officer. Therefore, he contends that he was competent enough to pass the order of removal.

4. We have given anxious consideration to the above contentions raised by the learned counsel for the applicant. In order to appreciate the contention, it is necessary to find who is the appointing authority in relation to the applicant. Rule 2(a) Railway Servants (Disc. & Appeal) Rules reads as under:

"(a) 'appointing authority' in relation to a railway servant means-

(i) the authority empowered to make appointments to the service of which the railway servant is, for the time being, a member or to the grade of the service in which the railway servant is, for the time being, included or

(ii) the authority empowered to make appointments to the post which the Railway servant, for the time being holds, or

(iii) the authority which appointed the Railway servant to such service, grade or post, as the case may be, or

(iv) where the Railway servant having been a permanent member of any other service or having substantively held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which appointed him to that service or to any grade in that service or to that post whichever authority is the highest authority."

5. Learned counsel for the applicant contends that as the applicant was appointed by the Senior Divisional Personnel Officer both to the post of Switchman as well as Senior Switchman, only the said authority is competent to remove him. The Divisional Operating Manager (E) being of inferior status to the appointing authority, the order of dismissal would be

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violative of Article 311 (1) of the Constitution. Where as the learned counsel for the respondents relies upon Rule 2(a)(i) and submits that as the Divisional Operating Officer is the authority empowered to appoint the applicant, and he was rightly removed by him. We do not agree. In this case we are of the view, ^{that} Rule 2(a)(iii) is attracted which says that the authority which appointed the Railway servant has to be treated as the appointing authority. It is not disputed under Article 311(1) of the Constitution ^{that} the civil servant shall not be dismissed/removed by the authority subordinate to that by which he was appointed. The learned counsel for the applicant relies upon the Judgment in Shri B.D.Lamba Vs. Union of India & Others, 1997(2) Vol.23 ATJ Page-33, where, on identical facts, the Court found that the authority which appointed the Railway servant has to be reckoned as appointing authority. In that case also the applicant was appointed by the Senior Divisional Personnel Officer whereas he was removed by the Divisional Operating Manager who is admittedly lesser in status than the appointing authority. Learned counsel for the applicant also relies upon the Judgment of the Supreme Court in Ram Krishan Prajapati Vs. State of U.P., Criminal Appeal No.648/85 dated 10.3.1999 wherein it was held that though the District Magistrate was the appointing authority of the appellant who was the Supply Inspector in the Department of Food and Civil Supplies in the State of Uttar Pradesh, as the Commissioner was the authority to promote the appellant from the cadre of Supply Inspector, the Commissioner alone should be treated the appointing authority. Rule 2(a) of the CCS (CCA)

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Rules were relied upon by the Court which are in parimateria with the present Rules. In the instant case when the applicant was dismissed/removed he was working as Senior Switchman having been promoted to the said post in 1984. According to the applicant, he was promoted by the Senior Divisional Personnel Officer (Junior Administrative Grade) in the grade of Rs.330-560. The learned counsel for the respondents denies this allegation and averred in the counter that it was the Divisional Personnel Officer who had promoted the applicant. He also filed an additional affidavit of the Divisional Personnel Officer (DPO) to the same effect and not by the Senior Divisional Personnel Officer. Since the applicant has been promoted to the post of Switchman admittedly by the Senior Divisional Personnel Officer, in the lower grade of Rs.260-400 and as an assertion was made by the applicant in this regard, we have directed the respondents to produce the records by an order dated 16.3.1999, however no records were produced. In the affidavit filed by the DPO it is stated as under :-

"That despite best efforts made, it has not been possible to lay hands on the file in which orders were passed by the competent authority for promotion of the Applicant as Switchman in grade 260-400 and later in grade 330-560."

6. Considering the facts of the case it appears that it is difficult to swallow the statement that the files were not traced. It should be noted that the orders of promotion/ appointment are important proceedings to the career of the employees and they should have been preserved. It is not the case that they were destroyed. Atleast the connected proceedings, note file etc., should have been produced. No documents has been brought except to

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file an affidavit, inspite of sufficient time has been given to the respondents for producing records to satisfy this Court as ^{who} was the authority, who appointed or promoted the applicant to the post of Senior Switchman.

7. In view of the aforesaid circumstances and relying upon the Annexure filed to show ^{that} the applicant has been promoted to the post of Switchman by the Senior Divisional Personnel Officer and also the statement made by the applicant in the OA itself that he was promoted to the Senior Switchman by the Senior Divisional Personnel Officer, we hold that the authority who passed the impugned order is lesser in status than that of the authority who appointed the applicant. The applicant being the civil servant, provisions of Article 311(1) are squarely applicable.

8. In the circumstances, the impugned orders of the disciplinary authority as well as the appellate, and reviewing authority are set aside. The matter is remanded back to the respondents to be placed before the competent disciplinary authority to pass fresh orders in accordance with law, within two months from the date of receipt of a copy of this order. Pending final order to be ~~passed~~ ^{as passed} by the competent authority, applicant shall be deemed to be under suspension and while passing the final orders the competent authority will also determine how the suspension period is to be treated.

9. The OA is disposed of in terms of the above paragraph. No costs.

Kanta J
(SMT. SHANTA SHASTRY)
MEMBER (A)

Handwritten signature
(V. RAJAGOPAL A FEDDY)
VICE-CHAI RMAN (J)